



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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OFFICE OF
ENFORCEMENT AND GENERAL COUNSEL

MEMORANDUM

TO: Richard O'Connell, Enforcement Director, Region IX

FROM: Robert Emmett

SUBJECT: Hawaii Permit Program Approval

With the sands and waters of Waikiki now, alas, only a fading memory, let me set down some comments and impressions with regard to the Hawaii permit program.

With respect to the documents necessary for program approval:

1. Program Description. It seems to me that the following items were missing from the program description and were not specifically required by the analysis accompanying Paul DeFalco's June 5, 1974, letter to Dr. Quisenberry.

a. A list of categories of point sources for which the Director will not issue permits. If there are no such categories, he should so indicate. (See paragraph B.1.F. of the Instructions for Review of State Permit Program issued February 5, 1973.)

b. A list of categories of point sources (the inventory of discharges supplied by the State does not meet this requirement) for which the Director proposed to issue permits under the Act. This list should include the number of point sources within each category and the number and percent of point sources within each category for which the state has already issued a state permit. (See State Guidelines, section 124.91(a)(4).) All that is needed is a simple table like the following:

<u>Discharge Category</u>	<u>Total Number of Discharges</u>	<u>Number of Discharges under State Permit</u>	<u>Percent of Discharges under State Permit</u>
1. <u>Industrial</u>			
<u>Major</u>	20	15	75%
<u>Minor</u>	30	10	33%
2. <u>Municipal</u>			
<u>Major</u>	5	4	80%
<u>Minor</u>	25	15	60%
3. <u>Agricultural</u>			
<u>Major</u>	10	0	0%
<u>Minor</u>	30	0	0%
4. <u>Federal Facility</u>			
<u>Major</u>	11	0	0%
<u>Minor</u>	13	0	0%
5. <u>All Others</u> (hospital, hotel, marina, school, etc.)			
<u>Major</u>	3	0	0%
<u>Minor</u>	17	0	0%

2. Regulations. I hope that the state has begun the procedures for the amendment of its regulations. I don't think the program would be approvable without the changes that we recommended. We should be in constant contact with Taylor and Soneda to be sure that they are pushing the amendments through every necessary step as quickly as possible. The amendments to the regulations should be formally adopted by the Governor prior to the September 15 public hearing to consider the program. We should be able to approve the program before the amendments are finally effective, however, as the state will be able to operate under the existing regulations.

3. Attorney General's Statement. The Attorney General's statement and the citations therein should be reexamined in the light of the changes made to the regulations. Where necessary, the citations and supporting remarks should be updated. Also, the statement should be expanded to incorporate the following:

a. A brief discussion explaining why the Hawaii variance procedure will not conflict with NPDES requirements; and

b. A citation to and discussion of Hawaii's authority which makes misrepresentations, false statements, tampering with monitoring devices, etc., unlawful and subject to fine. There does not appear to be any such provision in Chapter 342. The Attorney General's statement glosses over this. If there is no specific statute, Bob Taylor should dredge up a state perjury statute which will satisfy this requirement.

Dave Mowday and I discussed these changes with Bob Taylor during our meeting in his office. Bob indicated that he could either update the Attorney General's statement or else provide us with one or two supplementary letters. This should be done in time for the August 1 submission date.

With respect to the phasing in of Hawaii's responsibility for permit issuance and enforcement:

1. Reissuance by Hawaii of EPA-issued permits. I repeat my point that the reissuance by Hawaii of EPA-issued permits ought not to be made a condition of approval. I appreciate the desirability

of Hawaii issuing these permits in order to be able to enforce them as well as the difficulty of EPA enforcing the permits from 3,000 miles away. If Hawaii is agreeable to reissuing the EPA permits, fine, but this effort should not begin until all the remaining unissued permits are out. Besides, unless Hawaii suddenly catches fire, which is unlikely, you will probably find yourselves enforcing the EPA permits even if Hawaii does reissue them.

2. Hawaii Program. Plan v. Action. Although I agree that Hawaii should come to grips now with the difficulties of administering the program, I don't think we should rely solely on the technique of making Hawaii spend a lot of time drafting a "master plan." Rather than just writing about running a program, Hawaii should also be doing it. I think Hawaii should be actively involved right now in the setting up of a full scale program. They have the authority under their regulations to issue permits which meet NPDES requirements. Why not try to get them up to speed now so that they will have some momentum when we pass the baton. To carry out this idea I would suggest that the following specific actions be taken:

a. EPA assistance. If possible, send someone from the Region to Hawaii who has experience in the administrative aspects of the permit program. It would be his or her mission to help Hawaii set up the administrative framework for receiving applications, setting up files, issuing public notices, preparing fact sheets, and issuing permits.

b. Joint notices and hearings. Whether or not you are able to send an administrative specialist to Hawaii, Region IX and Hawaii should begin to issue joint public notices and, where necessary, hold joint public hearings. Apart from giving Hawaii valuable experience in administering the program, this technique also allows them to issue permits much sooner after they assume the program.

c. Increased state outputs. Hawaii's participation in the NPDES program should be sharply upgraded from the present output of three permits a month. If they can't do better they shouldn't be approved. At the very least they should be drafting permits for a large portion of the remaining applications.

d. July visit. If for one reason or another you are unable to place someone in the state offices for an extended period of time prior to takeover, you should make another trip sometime in July with the purpose of keeping their submission on schedule and firming up some procedures like those listed above for phasing in Hawaii's responsibility.

The two requirements discussed during our meetings which most concerned the state were (1) that they set up a separate, identifiable organizational NPDES unit and (2) that they increase -- almost double -- the number of manyears assigned to the NPDES program. I fully agree that fully discrete NPDES units must be set up within their organizational structure. We should hold firm on this requirement. With regard to manpower, however, I think we can show a great deal of flexibility. A plan calling for phasing in additional positions as necessary would be acceptable. After all, if 90% of the work is done when Hawaii takes over the program our requirements could result in a lot of people in PTR with nothing to do except maybe to reissue the EPA-issued permits. We should, however, continue to insist upon full time positions, both professional and clerical, being identified for the NPDES effort.

When I got back from the trip I asked Nancy Speck in our General Counsel's office to give me an opinion as to whether Hawaii's variance provision could be a bar to our approving the Hawaii program. Her memo on the subject has just arrived. As you can see, however, we have a problem. I will discuss it around here and get back to you.

I'm also enclosing the memos which you gave me when we were in San Francisco. I forgot to give them back to you.

Please keep me posted on Hawaii's progress. We should monitor closely their efforts to get this program together. I enjoyed making the trip with you, Bill, Dave, and Allan. I think it was worthwhile.

Bob E.

Robert A. Emmett

Enclosures

cc: Richard H. Johnson, EG-335
John B. Molloy, EG-338